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H. DALE LANGLEY, JR.
THE LAW FIRM OF H. DALE LANGLEY, JR. PC
610 WEST LYNN
AUSTIN TX 78703

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JUN 03 2005

OFFICE OF PETITIONS

In re Application of :
Nicolas D. Evans :
Application No. 09/344,795 : ON PETITION
Filed: 25 June, 1999 :
Atty Dckt No. NESO:009 :

This is a decision on the petition under 37 CFR 1.137(b),¹ filed on 24 February, 2005, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on 3 August, 2004, for failure to file a proper reply to the Notice of Non-Compliant Amendment mailed on 2 July, 2004, which set a one (1) month shortened

¹Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114.

In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

period for reply. On 6 August, 2004 (certificate of mailing 2 August, 2004), a response to the Notice was filed. However, on 9 November, 2004, an Office communication entitled Failure to Acceptably Respond to Notice of Non-Compliant Amendment was mailed, stating that the time period continued to run from the prior Notice of Non-Compliant Amendment. No extensions of the time for reply were obtained, and a Notice of Abandonment was mailed on 10 February, 2005.

Petitioners have filed a reply to the Notice of Non-Compliant Amendment with the present petition.

The application is being referred to Technology Center Art Unit 3621 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.

A handwritten signature in black ink, appearing to read "D. Wood", is positioned above the printed name.

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions